taken and eaten, is not enough. As the indictment in the present case alleges no more, the decision is satisfactory. But the position of the court that, "in cases of this character there can be no assault unless the poison is administered to the victim, and there can be no administration of it unless the victim partakes of the substance containing the poison," seems unwarranted under the code definition of assault. Smearing poison on the side of the cross bar of a "moustache cup" with the intent that the owner should swallow it, and consequently die, was held to be an attempt to murder in *Com.* v. *Kennedy,* 170 Mass. 18. Justice HOLMES said, "Every question of proximity must be determined by its own circumstances, and analogy is too imperfect to give much help. Any unlawful application of poison is an evil which threatens death, and would warrant holding the liability for an attempt to begin at a point more remote from the possibility of accomplishing what is expected than might be the case with lighter crimes." Whether we agree with these generalizations or not, we can hardly dispute Justice HOLMES' statement that, "Usually acts which are expected to bring about the end without further interference on the part of the criminal are near enough, unless the expectation is very absurd." The present case is, however, supported, as a matter of authority, by the case of *Peebles* v. *State,* 101 Ga. 585, which held that the act of putting poison into a well, with the intent that another should drink the water and be killed thereby, did not, without more, constitute the offence of assault with intent to murder, since the person for whom it was intended did not partake of it. It is interesting to note that the cases holding that an assault with poison cannot be committed without administration make it impossible to commit an assault by poison without involving a battery, the converse of the common doctrine that every battery includes an assault.

CRIMINAL LAW—BURGLARIOUS BREAKING.—The defendant found the door of a freight car open about an inch. He pushed the door open, entered, and took from the car certain articles. The only question in the case was whether this was a sufficient breaking to constitute burglary. *Held*: it was a sufficient breaking, on the theory that a breaking is the removal of an obstruction which, if left where found, would prevent an entrance. *State* v. *LaPoint,* (Vt. 1913) 88 Atl. 523.

The Vermont Criminal Code extends the common law burglary to include railway cars, but does not change the common law definition of breaking. The orthodox common law doctrine upon the problem here presented makes the question turn on the existence or non-existence of an implied invitation to enter. Under that doctrine the leaving of a door or window open, though not so far as to admit the body, has usually been held to constitute an invitation to enter so that opening the door or window further would not amount to a breaking. Authorities are gathered in notes in 2 Am. St. Rep. 383 and 139 Am. St. Rep. 1047. An actual invitation of course negatives criminality, and an invitation need not be expressed in words but may be implied from conduct, but the cases referred to would seem to involve an implication of an invitation where none in fact exists or is in common sense to be inferred.

The present case discards the doctrine of implied invitation to enter, and adopts as its test the removal of any obstruction which would otherwise prevent an entrance. It is supported by *Claiborne* v. *State,* 113 Tenn. 261, *People* v. *White,* 153 Mich. 617, and *State* v. *Sorensen,* (Iowa), 138 N. W. 411.

DAMAGES:—LOSS OF ABILITY TO LABOR.—Plaintiff, who had been incapacitated to perform his accustomed labor by reason of injuries received, was permitted to testify that the inability to work had worried him. The court instructed the jury that loss of ability to labor was pain and suffering. The only damages proved as claimed in the declaration were those included under the claim for mental pain and suffering. *Held,* the testimony was properly admitted and the charge was not erroneous. *City of Rome* v. *Ford* (Ga. 1913), 79 S. E. 243.

This case follows the doctrine laid down in *Atlanta Street Railroad Company* v. *Jacobs,* 88 Ga. 647; and in *Brush Electric Light & Power Company* v. *Simonsohn,* 107 Ga. 70, 32 S. E. 902; in which the court adopts the view that damages may be recovered for worry and mental suffering arising not only as the proximate result of the injury and the accompanying physical pain, but also for such suffering as arises from other causes, such as contemplation and reflection on the disfigurement and inability to labor and provide for self and family. This liberal view is entertained by the courts of several states, generally on the theory that it is no harder to ascertain the monetary equivalent of such suffering than it is to fix that caused by the physical pain itself, for which recovery is almost universally allowed. There is however a strong line of cases holding to the contrary on the ground that such suffering is too uncertain in nature to be compensated, and if allowed would tend to allow fraudulent claims. The situation is thoroughly reviewed in *Merrill* v. *Los Angeles Gas & Electric Co.,* 158 Cal. 499, 111 Pac. 534; the court there adopting the more liberal view of the principal case. That rule has been followed or countenanced in the following cases. *Citizens' Ry. Co.* v. *Branham* (Tex. Civ. App.) 137 S. W. 403; *Gray* v. *Washington Water Power Co.,* 30 Wash. 665, 71 Pac. 206; *Heddles* v. *Chicago etc. R. R. Co.,* 77 Wis. 228, 46 N. W. 115, 20 Am. St. Rep. 106; *Power* v. *Harlow,* 57 Mich. 1070, 23 N. W. 606; *The Oriflamme,* 3 Saury, 397, (Fed. Cas. 10572), *Atlanta & R. A. L. R. R. Co.* v. *Wood,* 48 Ga. 565; *Toledo, W. & W. Ry. Co.* v *Baddeley,* 54 Ill. 19, 5 Am. Rep. 71; *Ballou* v. *Farmun,* 11 Allen (Mass.) 73; *Western & A. R. R.* v. *Young,* 81 Ga. 397, 7 S. E. 912, 12 Am. St. Rep. 320; *McMahon* v. *Northern etc. R. R. Co.,* 39 Md. 438; *Webb* v. *Railroad Co.,* 51 App. Div. 194, 64 N. Y. Supp. 491; *Railway Co.* v. *Dobbins,* 60 Ark. 481, 30 S. W. 887; *Schmitz* v. *R. R. Co.,* 119 Mo. 256, 24 S.W. 472, 23 L. R. A. 250; *Galveston R. R. Co.* v. *Clark,* 21 Tex. Civ. App. 167, 51 S. W. 276. The opposite view is entertained by the courts in the cases below, on the theory that the mental suffering must be the result of sensory impulses produced by the injury itself. *Chicago, R. I. & P. Ry. Co.* v. *Caulfield,* 63 Fed. 396, 11 C. C. A. 552; *Chicago, B. & Q. R. R. Co.* v. *Hines,* 45 Ill. App. 299; *Maynard* v. *Oregon R. & N. Co.,* 46 Ore. 15, 78 Pac. 983, 68 L.R.A.